Bail Slip

Crl.A.No.575 of 2002

The Accused /Appellant was directed to be released on bail by the order of this court dated 13.9.2002 and made in Crl.M.P.NO. 8982 of 2002.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 26.06.2007

coram:-

The Hon'ble Mr. Justice R.REGUPATHI

Criminal Appeal No.575 of 2002

Ayyasamy ... Appellant

vs.

State By:
Inspector of Police,
Perianaickenpalayam P.S.,
Perianaickenpalayam,
Coimbatore District.
Cr. No.399/98. ... Respondent

Appal against the Judgment of the Additional District Sessions Judge (Fast Track Court No.1), Coimbatore, dated 26.03.2002, passed in Sessions Case No.134 of 2001.

For Appellant : Mr.M.N.Balakrishnan
For Respondent : Mr.Hasan Mohamed Jinnah,
Govt. Advocate (Crl. Side)

J U D G M E N T

The sole appellant in this case was tried by the District Sessions Judge (Fast Track Court No.1), Coimbatore, in Sessions Case No.134 of 2001, for an offence punishable under Section-376 IPC. After conclusion of the trial, he was acquitted of the offence charged, however, he was found guilty of an offence Section 354 IPC. and sentenced to undergo rigourous imprisonment for one year and also to pay a fine of Rs.3,000/-, of which Rs.2,000/- has been awarded as compensation to PW-1, and, in default of payment of fine amount, to undergo simple imprisonment for three months. Aggrieved against the conviction and sentence imposed, the present Appeal has been preferred before this Court.

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2. The case of the prosecution is that, on 01.10.1998, the accused came to the residence of the victim/PW-1 at 07.00 PM. for giving native treatment to her mother and directed the parents of the victim to stay away from the residence for the purpose of conducting pooja. Thereafter, he took the victim inside the residence and, against her will, is alleged to have committed rape on her.

3. PW-1 is the victim, PWs-4 and 5 are the father and cousin of PW-1 and PW-2 is the Medical Officer. On examination of PW-1, PW-2 has opined that PW-1 has not been subjected to rape. In the absence of positive evidence/opinion to substantiate the offence alleged against the appellant/accused, the learned trial Judge has acquitted him of the offence under Section-376 IPC. However, relying on the evidence of PW-1, corroborated by the testimonies of PWs-4 and 5, the learned trial Judge convicted the appellant for the offence under Section 354 IPC.

4. Learned counsel for the appellant submits that, during medical examination, there was no external injury found on the private parts of the victim/PW-1; in such circumstances, even the offence under Section 354 IPC. is not made out. Even so, pending trial and appeal before this Court, the appellant has already undergone substantial period of sentence and the said aspect may be taken into consideration.

5. Per contra, learned Government Advocate (Crl. Side) submits that, though there is no material to substantiate the commission of offence of rape, on the basis of the oral testimony of PW-1, corroborated by the evidence of PWs-4 and 5, an offence under Section 354 IPC is made out.

6. I perused the materials available on record and considered the submissions made on either side. Though it has been positively stated by PW-1 that the accused committed rape, in the course of cross-examination, she has stated that she was not interested in pursuing the prosecution any further. Except stating that she has been raped, PW-1 has not elaborated the commission of offence. On a perusal of the evidence of PW-2 Medical Officer, who examined PW-1, it could be seen that she has stated in clear and emphatic terms that there is no evidence for commission of rape; moreover, no external injury has been noticed by her on the private parts of the victim. On perusal of the evidence of PW-1, it appears that she is under misconception regarding sex. Since there is no material at all to substantiate the allegation, the appellant has been rightly acquitted for the major offence by the trial court. However, there are materials to substantiate that the appellant has taken the victim, laid her on the floor keeping the parents outside the residence and attempted to outrage her modesty. The offence is said to have taken place during 1998. The appellant was subjected to the ordeal of trial and appeal. It is submitted by the learned counsel for the appellant that the appellant has already undergone imprisonment for 145 days (nearly 5 months).

7. While confirming the Judgment of the trial court, taking note of

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the fact that the appellant has undergone imprisonment for a period of about five months and also of the fact that he is aged about 65, I am of the view that the substantial sentence of one year R.I. could be reduced to the period already undergone.

In the result, the appeal is dismissed with the modification in sentence viz., the period of one year R.I. as imposed by the trial court is reduced to the period already undergone by the appellant.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.
To
1. The Additional District Judge
(FTC No.1), Coimbatore.

1a.-do- Thro. The Principal Sessions Judge,
Coimbatore.

2. The Judicial Magistrate No.VII Coimbatore.

3. -do- The Chief Judicial Magistrate,
Coimbatore.

4. The Superintendent, Central Prison,
Coimbatore.

5. The Public Prosecutor, High court, Madras.

6. The Inpector of Police,
Perianaickenpalayam Police Station,
Perianailckenpalayam, Coimbatore Dist.

1 cc to Mr. P.Venkatasubramanin Advocate SR.NO.38170

RC(co)
RD 18.7.07

C.A. No.575 of 2002.

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